



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 7, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0196

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Unfounded (Expedited)
# 2	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)
# 3	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded (Expedited)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained - Unfounded (Expedited)
# 5	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Training Referral

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

The Complainant¹ alleged that Named Employee #1 (NE#1) conducted a traffic stop on a vehicle in which she was a passenger. The Complainant alleged NE#1 was disrespectful and yelled at the vehicle occupants. The Complainant also alleged NE#1 stopped the vehicle based on the vehicle occupants' race and retaliated against them for previously filing an OPA complaint. The Complainant also alleged that NE#1 escalated the situation by calling other officers to the scene.

It was also alleged that Named Employee #2 (NE#2), who also responded to the traffic stop, made a profane and inflammatory comment in front of community members, including small children.

¹ OPA listed three individuals as "Complainants:" the driver of the stopped vehicle, the passenger, and the passenger's twin sister (who was not present during the traffic stop). Only the passenger and her twin sister filed OPA complaints. However, OPA interviewed the driver, who articulated the same concerns raised by the passenger and her twin sister. Due to her primary role and complaint, the vehicle passenger is referred to as the "Complainant" throughout this DCM. The driver and twin sister are separately identified.



ADMINISTRATIVE NOTE:

All allegations against NE#1 were designated for Expedited Investigation. That means, with the Office of Inspector General's agreement, OPA believed it could reach, and issue recommended findings based on its intake investigation.

During its intake investigation, OPA identified allegations against NE#1 for failing to submit traffic warning paperwork by the end of his shift and Witness Supervisor #1 (WS#1), who also responded to the traffic stop, for professionalism. Those allegations were sent to their chain of command for Supervisor Action.

SUMMARY OF INVESTIGATION:

The Complainant was a passenger in a vehicle driven by Community Member #1 (CM#1). The Complainant and her twin sister, Community Member #2 (CM#2), contacted OPA about a traffic stop conducted by NE#1. The Complainant alleged NE#1 pulled her and CM#1 over for "honking at [a] biker that officer didn't see" and that NE#1 "lied and said we we're [sic] excessively honking." CM#2 alleged other officers arrived and treated the Complainant and CM#1 like "criminals." CM#2 also alleged the incident was retaliatory because CM#2 filed a prior OPA complaint. The Complainant and CM#2 also alleged the stop was motivated by the Complainant and CM#1's race.

OPA opened an investigation. During the investigation, OPA reviewed the complaints, computer-aided dispatch (CAD) call report, the citation/warning report filled out by NE#1, body-worn video (BWV), in-car video (ICV), and precinct radio traffic. OPA also interviewed the Complainant, CM#1, NE#2, and Witness Officer #1 (WO#1). After initial contact with OPA, CM#2 declined an OPA interview. NE#1 was not interviewed because the allegations against him were approved for expedited investigation or resolved by Supervisor Action.

BWV and ICV recorded the full stop and interaction. In summary, OPA's investigation showed:

NE#1 was in a marked patrol car stopped at an intersection for a pedestrian. Across the intersection, in the oncoming lane, another vehicle was stopped. CM#1 and the Complainant's vehicle pulled behind the other vehicle. A car horn honked.



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² This screenshot is from NE#1's ICV. CM#1 and the Complainant were stopped in the second vehicle in the oncoming traffic lane.

³ This ICV screenshot shows a bicyclist in the left oncoming traffic lane in front of CM#1 and the Complainant, who were behind a car in the adjacent lane.



As NE#1 entered the intersection, he activated his emergency lights and made a U-turn, pulling behind CM#1 and the Complainant's vehicle.

NE#1 broadcasted the traffic stop over the radio and chirped his siren. CM#1 and the Complainant's vehicle stopped about seventy-five (75) seconds later at a garage door. NE#1 exited his vehicle and approached the driver's side of CM#1's vehicle.

CM#1 told NE#1 that the bicyclist was staggering in front of him. The Complainant asked NE#1 why they were stopped. NE#1 said, "...because he was laying on his horn." NE#1 and the Complainant said the horn honking lasted two or three seconds. NE#1 said it was seven-and-a-half to ten seconds.

Other officers arrived, which the Complainant questioned. NE#1 explained that other officers arrived because they did not stop immediately after he activated his emergency lights. CM#1 explained they planned to stop at their current location anyway. NE#1 responded, "Fair enough."

The Complainant asked if she could exit the vehicle. NE#1 agreed and asked if she wanted to take the young child in the back seat. While getting the child out of the car, the Complainant yelled, "For honking a fucking horn? You motherfuckers are stupid," and used racial epithets while calling officers "racist ass bitch." The Complainant's child dropped his hat. An officer reached for the hat. The Complainant said, "Don't touch him or his shit." NE#2, who stood nearby, responded, "No one touched him or his shit." The Complainant order the officers to back "the fuck up" from her son.

For over 30 minutes, NE#1 tried to explain the reason for the stop to CM#1, the Complainant, the Complainant's father (who arrived on the scene), and on-looking community members. NE#1 ultimately shook hands with the Complainant's father and CM#1. NE#1 also apologized to the Complainant if he "came off any sort of way." The Complainant said she was "upset at the situation."

NE#1 issued CM#1 a warning.⁴ Consistent with his conversation with CM#1 recorded on BWV, NE#1 explained his belief that the horn honking was directed at another vehicle for stopping at the crosswalk. NE#1 also noted CM#1's explanation that he was honking at a bicyclist swerving in front of him. NE#1 explained his reasoning for finding CM#1's account credible.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional

The Complainant alleged NE#1 did not explain the reason for the stop and was disrespectful and yelling.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. SPD Policy 5.001-POL-10. Additionally, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Furthermore, the

⁴ See SMC 11.84.320 (permitting horn use on streets or alleys to give audible warnings but forbidding any other uses).



policy states: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” *Id.*

This allegation is unfounded. OPA reviewed BWV of NE#1’s entire interaction with CM#1 and the Complainant. NE#1 explained the reasoning for the stop multiple times. Moreover, BWV did not depict NE#1 yelling or using an elevated voice during the contact. Contrarily, NE#1 spent extensive time calmly and politely explaining the reason for the traffic stop to the Complainant, CM#1, the Complainant’s father, and community members who engaged in the situation.

OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing

The Complainant alleged NE#1 only stopped her and CM#1 because of their race.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

OPA finds this allegation to be unfounded. As an initial matter, NE#1 had a lawful basis to stop the vehicle. Moreover, at night, with headlights facing him, and another vehicle between himself and the one driver by CM#1, the preponderance of the evidence suggests NE#1 would not have been able to identify the race of the vehicle occupants before initiating the stop.

OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited

It was alleged that NE#1 retaliated against CM#2, the Complainant, and CM#1, based on CM#2 filing a prior complaint.

SPD policy precludes its employees from engaging in retaliation. SPD Policy 5.001-POL-14. SPD employees are prohibited from retaliating against a person who engages in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” *Id.* Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. *Id.*

This allegation is unfounded. OPA review of CM#2’s prior complaints did not show any connection to NE#1. CM#2’s other complaints were against entirely different officers. Moreover, CM#1’s vehicle was not registered to either the



Complainant or CM#2, and NE#1 did not run the license plate. For the reasons set forth above at Named Employee #1, Allegation #2, it is also unlikely that NE#1 could have visualized the vehicle occupants before pulling them over. OPA found no evidence to support this allegation.

OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #4

6.220 - Voluntary Contacts, Terry Stops & Detentions 6.220 - POL – 2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

The Complainant alleged NE#1 stopped her and CM#1 without reason.

Terry stops are seizures of an individual and must be based on reasonable suspicion to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” SPD Policy 6.220-POL-1. SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” Id. Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” Id. While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” Id.

This allegation is unfounded. BWV and ICV showed CM#1 honking his horn for about seven seconds. Unless necessary as an audible warning, this would violate SMC 11.84.320. Under the totality of the circumstances, it was reasonable for NE#1 to presume CM#1 was honking his horn at the vehicle in front of him. Moreover, even if CM#1 was honking at the bicyclist for swerving in front of him, seven seconds could be considered an unreasonable time to honk to provide an audible warning. NE#1 had reasonable suspicion to effect the stop, and SPD Policy encourages officers to enforce traffic violations appropriately through warnings and citations. See SPD Policy 16.230-POL-1.

OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #5

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

The Complainant alleged NE#1 failed to de-escalate by calling multiple officers to the scene.

SPD Policy instructs that: “When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are also encouraged to use team approaches to consider whether any officer has successfully established rapport with the subject. *Id.* The selection of



de-escalation options is to be guided by the “totality of the circumstances.” The policy gives several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

This allegation is unfounded. BWV and Radio Traffic confirmed that NE#1 did not request additional officers to the scene. However, NE#1 advised dispatch that he was “under control” less than ten seconds after contacting the vehicle. NE#1 also told other officers that they could go. Other officers arrived on the scene—as NE#1 explained to the Complainant, CM#1, and the Complainant’s father—because CM#1 failed to pull over, and then the Complainant could be heard screaming over the radio.

OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional

It was alleged NE#2 was unprofessional and used profanity in front of community members, including a young child.

OPA finds NE#2 unprofessional in two respects. First, repeating the Complainant’s profanity: “No one touched him or his shit.” It was unhelpful and did not meet the department’s standards. Second, a community member suggested that the officers de-escalate by leaving the scene. NE#1 responded, “Keep adding to the crowd, and you’ll see what the crowd is for.” Similarly, that comment was unhelpful and needlessly confrontational.

OPA appreciates the difficulty of this call as the Complainant was loudly yelling throughout the encounter, using profanity, and as previously uninvolved community members—with no first-hand knowledge of the underlying traffic stop—acted in an accusatory, confrontational, and escalatory manner towards the officers on scene. The better responses were the polite and patient approach demonstrated by NE#1 or Listen and Explain with Equity and Dignity (LEED) as trained by the Department. Otherwise, silence would be preferable to repeating profanity and verbally sparing with an uninvolved onlooker.

However, considering these statements' minor nature and that NE#2 has not been disciplined for similar behavior, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review SPD Policy 5.001-POL-10 with NE#2, and provide retraining and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**